

STATE OF MICHIGAN
COURT OF APPEALS

In re FLAGG, Minors.

UNPUBLISHED
June 28, 2016

No. 329977
Mecosta Circuit Court
Family Division
LC No. 13-006047-NA

Before: STEPHENS, P.J., and BECKERING and GLEICHER, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to his four children pursuant to MCL 712A.19b(3)(g) (failure to provide proper care and custody), (j) (reasonable likelihood that the children will be harmed if returned to the home of the parent), and (k)(ix) (the parent abused the child or a sibling of the child and the abuse included sexual abuse as defined under MCL 722.622). We affirm.

In order to terminate parental rights, the trial court must find that one or more grounds for termination under MCL 712A.19b(3) have been established by clear and convincing evidence. *In re Olive/Metts Minors*, 297 Mich App 35, 41; 823 NW2d 144 (2012). We review for clear error the trial court’s factual findings and ultimate determinations on the statutory grounds for termination. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). “A trial court’s decision is clearly erroneous if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *In re Olive/Metts Minors*, 297 Mich App at 41 (citation, quotation marks, and alteration omitted). “We give deference to the trial court’s special opportunity to judge the credibility of the witnesses.” *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

The allegations giving rise to this case concerned sexual abuse by respondent against his two youngest children. Respondent argues that a myriad of the trial court’s factual findings were clearly erroneous. The majority of respondent’s challenges concern the second-youngest child. However, the trial court, in a thorough and well-reasoned opinion, did not find statutory grounds for termination based on the allegations pertaining to the second-youngest child. Accordingly, we find that the majority of respondent’s challenges are not pertinent to a discussion of whether the trial court clearly erred in finding clear and convincing evidence of statutory grounds for termination. Moreover, we have reviewed each of his claims of error as they relate to the trial court’s factual findings concerning the second-youngest child and conclude that they lack merit. The trial court thoroughly analyzed and weighed the evidence as it pertained to that child and

found that, due in part to a forensic interview that it aptly identified as being unreliable, the evidence was not clear and convincing.

As it concerns the youngest child, the trial court's factual findings—and ultimate determination as to statutory grounds for termination—were not clearly erroneous. The evidence reveals that the youngest child made a spontaneous disclosure of sexual abuse, perpetrated by respondent, to a psychologist, Dr. Byron Barnes. In addition, Barnes testified that he observed behaviors in the youngest child that he described as being “extremely hyper-sexualized” and indicative of abuse, which often occurred when the conversation pertained to respondent. Dr. Barnes also testified regarding the difference between words and behaviors in a “coaching situation” and that he thought it “would be impossible to have the kind of sexualized behavior that we saw be related to coaching.” A counselor, Kathleen Farrell-Perini, also saw these behaviors in the child. Although respondent presented evidence from his own expert, Dr. Wayne Simmons, to question Barnes's conclusion, the trial court found Barnes was credible. This was in part due to the fact that, although Simmons had questions about the process in which these protective proceedings unfolded, Simmons was unable to explain, through source attribution, coaching, or otherwise, the youngest child's behaviors and spontaneous disclosure to Barnes. In addition, we note that Simmons never interviewed the child, and that the only individual Simmons interviewed in forming his opinions was respondent. We defer to the trial court's credibility determinations, and decline to find clear error in the court's decision to find Barnes, rather than Simmons, to be credible. See *In re HRC*, 286 Mich App at 459.

In arguing that the trial court should not have given weight to Barnes's testimony, respondent also argues that it was possible another sources, such as one of the older children, could have been the source of the youngest child's “extremely hyper-sexualized” behavior. Respondent points to an incident involving some of the older children. However, the record contains no evidence that the youngest child was present during this incident. The incident mentioned by respondent does not demonstrate that the trial court's findings were clearly erroneous.

We also note that respondent appears to accuse the trial court of being biased against him. In doing so, respondent cites portions of the trial court's opinion in which the court mentioned respondent's divorce from his ex-wife. He argues that the trial court's failure to mention that respondent's ex-wife's infidelity caused the divorce shows the court harbored bias against him. He also argues that, contrary to the trial court's suggestions, he never theorized that his ex-wife coached the children to fabricate the allegations in order to gain custody over the children. A party alleging judicial bias must overcome a heavy presumption of judicial impartiality. *People v Jackson*, 292 Mich App 583, 598; 808 NW2d 541 (2011).

There is no merit to any of respondent's claims of bias. Contrary to respondent's representations, the trial court accurately summarized suggestions by respondent—both from respondent's testimony at the adjudication trial and from his counsel's opening statement at the termination hearing—that the allegations of abuse could have stemmed from respondent's ex-wife's desire to obtain custody of the children. Further, the fact that the trial court's opinion and order did not mention respondent's ex-wife's infidelity does not show bias against respondent; instead, it shows that the trial court was appropriately focused on the subject of the termination hearing—the allegations against respondent—rather than rehashing the divorce proceedings

between respondent and his ex-wife. None of respondent's allegations come even remotely close to overcoming the heavy presumption of judicial impartiality. See *id.*

Lastly, although respondent does not expressly raise a challenge to the trial court's best-interests determination, we find no clear error in that portion of the court's ruling. See *In re Olive/Metts Minors*, 297 Mich App at 40 (we review for clear error the trial court's best-interests finding). Given the nature of the abuse perpetrated by respondent against the youngest child, termination was clearly in the best interests of the children. See *In re HRC*, 286 Mich App at 460-461 (evidence of how a parent treats one child is indicative of how he will treat other children).

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Jane M. Beckering
/s/ Elizabeth L. Gleicher